**APPENDIX 2**

# Summary of Comments Received

## 1. Public Comments on the Subaqueous Lands Management Enforceable Policy

*Issue 1.* The impact of the pumping hiatus (authorized by the Marine Resource Commissions' permit) on the minimum in-stream flow requirement of the VWP permit and the frequency with which the hiatus will have to be lifted in order to maintain the safe yield of the reservoir are both unknown. The applicant's scientists concede that the data does not exist to determine these impacts.

*Comments on this issue from:* Mr. Michael Town, Sierra Club. Letter (page 2, item 2) and Transcript (page 40).

*Question:* Please indicate whether the minimum in-stream flows and other conditions set out in the VWP permit will conflict with the pumping hiatus and related requirements set out in the MRC permit. If there are conflicts, can these be effectively resolved without violating the current MRC permit?

*Issue 2.* The chosen intake location poses some of the highest potential risk to juvenile anadromous fish populations. The placement of the intake in tidal water means that there is a high probability that early life stages of fish will be transported back and forth past the intake screen many times by ebb and flood tides. To reduce the risk of undesirable
impacts to fishery resources or to a safe water yield objective, a monitoring program should be completed prior to a final permit decision.

*Comments on this issue from:* VIMS (June 25, 2004 letter, page 6).

*Question:* Please indicate how this issue was addressed in considering consistency of the project proposal with the Subaqueous Lands Management enforceable policy.

**Marine Resources Commission Response**

The Marine Resources Commission summarized some of the issues discussed in the Commission's August 11-12 2004, public hearings relative to the permit decision taken by the Commission on August 12, and stated its expectation that the City of Newport News, the permittee, will comply with the permit and all of the conditions related to the Subaqueous Lands Management enforceable policy administered by the Commission.

## 2. Public Comments on Fisheries Management Enforceable Policy

*Issue 1.* The water intake for the project, in the middle of the most productive part of the Mattaponi River for shad (the "worst possible location"), would withdraw as much as 1/3 of the river flow and might alter the salinity of the river to the detriment of the remaining, depleted shad population which is sensitive to changes in salinity. Adult shad spawning

behavior and migratory patterns would be disrupted. The permit issued by MRC was based on inadequate information concerning these impacts of the project on the shad population in the Mattaponi River, in part because the applicant has not performed the multi-dimensional salinity study mandated by the VWP permit.

In addition, the requirement for a pumping hiatus can be lifted whenever there is a water emergency, which could conflict with the shad spawning season.

*Comments on this issue from:* Mr. Carl Custalow, Chief, Mattaponi Tribe (Transcript, pp. 5-8), Delegate Harvey Morgan (Transcript, pages 16-17), Ms. Christina Wulf, VA Forest Watch (Transcript, page 27), Mr. Matt Rosenberg, Georgetown University Law Center, Institute for Public Representation (GULC-IPR) (Transcript, page 35), Mr. Michael Town, Sierra Club (Transcript, pages 40-41), Mr. Kelly Place, Watermen's Associations (Transcript, pages 51, 54, 57-58), Mr. Eugene Rivara, Alliance to Save the Mattaponi (Transcript, page 64), Mr. Ron Hachey, King and Queen County (Transcript, page 65), Ms. Kitty Cox (Transcript, page 70).

*Questions:* Are the placement of the water intake and the amounts of water to be withdrawn consistent with the Fisheries Management Enforceable Policies administered by the Department and/or the Commission? Does the Department and/or the Commission consider salinity modeling in advising the Commission on its subaqueous bed encroachment permitting, and was any such advice given to MRC in regard to this project proposal?

*Issue 2.* According to GULC-IRP, the applicant has not responded to a concern voiced earlier by DGIF and the U.S. Fish and Wildlife Service and quoted in the Final Recommended Record of Decision that the "proposed intake structure in the Mattaponi River could cause erosion or accretion of the adjacent marshes." These marshes are nursery grounds and spawning habitats for several fishery species.

*Comments on this issue from:* Georgetown University Law Center, Institute for Public Representation (October 27 letter, page 6).

*Question:* Please indicate whether, in your judgment, operation of the water intake as presently proposed would be more, less, or equally likely as the earlier proposal to cause erosion or accretion of adjacent marsh areas in its vicinity if implemented

**Marine Resources Commission Response**

Stated above under "Subaqueous Lands Management."

**Department of Game and Inland Fisheries Response**

No additional response was submitted.

**3. Public Comments on Wetlands Management Enforceable Policy**

*Issue #1.* the consistency certification fails to address wetland mitigation and potential impacts to Mattaponi River marshes. Specifically, scientists' review of the applicant's earlier wetland mitigation plan found that the plan would result in the loss of wetland benefits: natural filtering

capabilities of non-tidal wetlands to remove excess nutrients from runoff. The earlier proposed wetland mitigation plan would not meet the "no-net-loss" standard. The final wetland mitigation plan, required by the VWP permit, has not been issued. A conceptual mitigation plan associated with the Corps of Engineers' Section 404 permit action is being issued for public comment ending February 1, 2005, according to the Corps of Engineers, North Atlantic Division.

*Comments on this issue from:* Ms. Ann Jennings, Chesapeake Bay Foundation ("CBF") (letter, pages 2-3), citing Darke, Daniels, Megonigal, Whittecar, "Evaluation of the King William Reservoir Final Wetland Mitigation Plan," report commissioned by CBF (pages 4-5).

*Questions:* Can the VWP permit be valid in the absence of an approved wetland mitigation plan? If not, is the proposed project consistent with the Wetlands Management enforceable policy?

*Issue #2.* According to the Georgetown University Law Center, Institute for Public Representation ("GULC-IPR"), the applicant failed to comply with deadlines in the December 1997 DEQ permit applicable to the following:

- Final, detailed wetland mitigation plan;
- Drought water conservation plan;
- Eco-monitoring plan;
- Salinity monitoring plan preceded by multi-dimensional modeling; and
- Operation and maintenance manual.

(Similarly, the applicant failed to comply with newly established deadlines for these plans in the December 2002 DEQ permit modification.) The applicant has not received a valid extension of the deadlines.

*Comments on this issue from:* GULC-IPR (letter, page 3; Transcript, pages 34-35); Southern Environmental Law Center letter (page 2); CBF letter (pages 2-3).

*Question:* Does the failure of the applicant to provide these plans mean that the applicant is in violation of the VWP permit? If so, is the project consistent with the Wetlands Management enforceable policy of the VCP?

*Issue #3.* The 2004 MRC permit prohibits water withdrawals from the Mattaponi River during months in which the river normally runs at high flows. The salinity impacts of the reduction of freshwater flows upon the tidal, freshwater wetlands along the Mattaponi River were evaluated in a 1991 VIMS study that was based on the City's original water withdrawal plan. It is not clear that the 1991 study sufficiently addresses the impact on freshwater flows resulting from the pumping scenario mandated in the 2004 MRC permit. However, the VWP permit requires a salinity monitoring plan (Special Conditions, page 8, item D.4), which has not been submitted.

According to CBF, the proposed project should not be determined consistent with the VWP permit without taking into account possible changes in salinity impacts of water withdrawals, since a salinity monitoring plan, not yet submitted, was one of the requirements of the permit.

*Comments on this issue from:* CBF letter (page 3).

*Question:* Please indicate how salinity impacts of water withdrawals were addressed in the VWP permitting process in the absence of a salinity monitoring plan.

*Issue #4.* The 2002 VWP permit modification requires a minimum in-stream flow below the dam at Cohoke Creek as measured at Scotland Landing (Special Conditions, page 3, item B). Unless the permittee has instituted mandatory emergency drought water conservation measures, water should not be withdrawn from the Mattaponi River whenever the freshwater in-flow is below the minimum required values. The minimum in-stream flows, once drought measures are in place, are 197.6 million gallons per day (mgd) from December 1 through May 31 and 98.8 mgd between June 1 and November 30. Typically, June 1 through November 30 are low-flow months. In addition, at the same time that minimum in-stream flows must be maintained, the permittee is required to maintain a safe yield in the reservoir.

The MRC is tasked with the protection of anadromous fish species, including the American shad. In order to provide protection to this species, the MRC included a permit condition (Condition #19) that requires that the permittee not operate its raw water intake structure from March 1 through July 31 (150-day pumping hiatus) in any year unless permitted to do so in accordance with the approved temperature triggers. Typically, March, April, and May are high-flow months.

*Comments on this issue from: Mr.* Kelly Place, Watermen's Associations (Transcript, page 58); VIMS report, June 25, 2004 (page 6); Alliance to Save the Mattaponi comments, (page 3, "Hiatus 1" heading); Mr. Michael Town, Sierra Club (Transcript, pages 40-41).

*Question:* The comments indicate that the permit conditions of the DEQ Water Division and of the MRC may be in conflict with each other. Can the permittee meet both the required pumping hiatus and the required minimum in-stream flow and maintain a safe water supply within the reservoir? Can these issues be resolved without violating the current (2002) VWP permit?

*Issue #5.* The impacts of the proposed project on in-stream flows, wetland losses, and salinity in the Mattaponi River appear greater than necessary for the project to meet projected water supply needs. It does not appear that the wetland impacts associated with the project have been avoided to the extent possible.

*Comments on this issue from:* Mr. Taylor, Wetlands Watch (Transcript, pages 60-61); Alliance to Save the Mattaponi (page 2, "Beneficial Use" and "Wetland non-tidal" and other headings).

*Question:* Please indicate how avoidance of impacts was addressed in the permitting process.

*Issue #6.* "Poison pipes" have been added to the project design since the issuance of the VWP permit, and sanctioned in the MRC permit, without any public input or study, according to public hearing participants. These pipes have been proposed to combat invasive species such as zebra mussels, but the chemical agent in the pipes may affect Cohoke Creek at the proposed dam site, or other waterways and marine resources. There is no indication that the water quality impacts of proposed "poison pipes" have been evaluated by DEQ or by the public.

*Comments on this issue from:* Alliance to Save the Mattaponi (page 7, "poison pipe" heading); Mr. Kelly Place, Association of Virginia Watermen (Transcript, pages 56-7).

*Question:* Please discuss whether the proposed project can be determined to be consistent with the VWP permit or with the Enforceable Policies governing wetlands or non-point source pollution in the absence of such an evaluation. Will the addition of these pipes result in any discharge into state waters? If yes, is a Virginia Pollutant Discharge Elimination System (VPDES) permit required for such a discharge?

*Issue #7.* This would be the single largest permitted destruction of wetlands since passage of the Clean Water Act in 1972, and the wetland losses cannot be effectively replaced. Moreover, the water needs have been reassessed downward since the initial estimates were made and the VWP permit was issued in 1997; the water yield that is proposed is about twice the currently anticipated need; and viable, less damaging alternatives for meeting future water needs have been identified. In short, the impacts of the proposed project are seriously out of proportion to the needs for the water it would produce.

*Comments on this issue from:* Sierra Club (letter, page 1 and Transcript, pages 38-39); Delegate Morgan letter, read into Transcript (pages 16-17); Ms. Ann Jennings, CBF (Transcript, pages 30-31); Mr. Michael Town, Sierra Club (Transcript, page 38); Christina Wulf, Forest Watch (Transcript, page 26); Congresswoman. Jo Ann Davis (letter, read into Transcript, page 13-14); Alliance to Save the Mattaponi (pages 2-5). (See also Norfolk District, Army Corps of Engineers, Recommended Record of Decision, dated March 20, 2001, pages 65-68 on wetlands impacts, and 15-34 on need.)

*Question:* Please indicate how the scale of the project was addressed in relation to anticipated water needs in the VWP permit and permit modification processes.

**DEQ Water Division Response**

The Division provided the following response to Issue #6 above addressing the use of chemicals used on intake pipes:

This issue first presented itself during the 2003 public comment period for the VMRC permit because that permit is for the intake only. Public commenters objected to the existence of a chemical feed line into the intake manifold on the drawings of the joint permit application. The concern is that the pipe could emit oxidants or biocides into the water column. VMRC felt that this was a legitimate issue and addressed the issue with a special condition in their permit requiring VMRC's prior approval before connecting and operating the chemical feed. Presumably, VMRC will consider the circumstances in which the chemical feed is used and the agent itself.

The City of Newport News included the chemical feed line in the drawings as a preventative measure. They do not know whether it will be actually needed or used but decided to build in the capability at the start rather that retrofitting the structure later. Because the feed is on the inside of the intake manifold, as long as the pumps are running, no chemical will be emitted to the Mattaponi River, as the direction of flow and chemical will be toward the wet well and toward the Lake.

Although use of these chemicals was not foreseen at the time of issuance of the VWP Permit, the issue can be addressed by DEQ during the approval process of the operations plan required to be submitted and approved as a permit condition. DEQ can require that Newport News

include in the operating plan, a provision that when the chemical feed is operated, the pumps must operate for a sufficient period of time after the feed is shut off to clear the intake, the pipes and the wet well of any residual agent thereby preventing any emission of agent to the Mattaponi River. Therefore, the DEQ's Water Division believes this issue is addressed by both the VMRC and VWP permits.

As previously noted, the VWP Permit for this project expires in December 2007. According to the terms of the existing VWP permit, reapplication must be made no less than 180 days prior to the expiration date. If a reapplication is submitted, there will be ample opportunity for public comment and consideration of all relevant information, including the issues and questions discussed above, before any decision regarding reissuance of a permit is made.

**4. Public Comments on Non-Point Source Pollution Control Enforceable Policy**

*Issue 1.* The applicant has not responded to earlier concerns, voiced by DGIF and the U.S. Fish and Wildlife Service and quoted in the Final Recommended Record of Decision, that the "proposed intake structure in the Mattaponi River could cause erosion or accretion of the adjacent marshes."

*Comments on this issue from:* GULC-IPR letter, October 27 (page 6).

*Question:* Please indicate whether, in your judgment, operation of the water intake as presently proposed would be more, less, or equally likely as the earlier proposal to cause erosion or accretion of adjacent marsh areas in its vicinity if implemented.

*Issue 2*. The applicant has never submitted the Erosion and Sediment Control Plan required by the County's Chesapeake Bay Preservation Area zoning ordinance.

*Comments on this issue from:* GULC-IPR letter, October 27 (page 6).

*Question:* Please indicate whether DCR or its Watershed Office has tracked this submission or takes responsibility for it.

**Department of Conservation and Recreation Response**

DCR reiterates its earlier comments, which were that an erosion and sediment control (ESC) plan must be submitted for approval to King William County *prior* to any land disturbing activities for this project. For compliance with Virginia Stormwater Management (SWM) Laws and Regulations, stormwater management plan must also be reviewed and approved by the County prior to land-disturbing activities. However, it is not necessary to submit plans until such time that the project is fully authorized by state and federal agencies. In general, DCR Watershed Offices do not track proposed projects at the local level; the implementation of the ESC and SWM laws is the responsibility of the locality in which a project is being undertaken.

**5. Public Comments on Coastal Lands Management Enforceable Policy**

*Issue 1.* The applicant stated that the project would comply with the Coastal Lands Management Enforceable Policy, because the project is a water-dependent activity under the Chesapeake Bay Preservation Area Designation and Management Regulations (9 VAC 10-20-130). It appears that

compliance and enforcement of the Coastal Lands Management Policy are left to local governments, and that King William County's activity in this regard would be "not equipped" to enforce requirements by virtue of its partnership agreement with the applicant locality in the project.

*Comments on this issue from:* Mr. Billy Mills, Mattaponi and Pamunkey Rivers Association (Transcript, pages 44-46).

*Question:* Please comment on whether the entire project appears consistent with the Regulations. If it does not, how might DCR-DCBLA enforce applicable requirements, and what are they?

*Issue 2.* GULC-IPR states that the applicant is not in compliance with the Coastal Lands Management Enforceable Policy because several procedural steps that are legally required in order to allow development in a Chesapeake Bay Preservation Area have not been taken by the applicant. Specifically, the applicant proposes to build a reservoir within the County's Chesapeake Bay Preservation Area, but did not conduct the required environmental site assessment or submit a development plan, both of which are among the submissions required to demonstrate that the project is water-dependent, and that non-water-dependent components are located outside of Resource Protection Areas. The applicant has asserted that these requirements are met, but GULC-IPR indicates that the determination on this point belongs to the County, which has not been given an opportunity to make it.

*Comments on this issue from:* GULC-IPR (October 27 letter, pages 4-5; see also Transcript, Pages 35-37).

*Question:* Please analyze this issue and indicate whether appropriate steps have been taken by the applicant, the County, and, if necessary, by DCR-DCBLA to ensure that the project is consistent with the Coastal Lands Management Enforceable Policy.

**Department of Conservation and Recreation Response**

DCR's responded to these issues as follows:

It has been previously indicated that the King William Reservoir project should be considered a water-dependent facility, and as such, is allowed in the Resource Protection Area. While the development of the reservoir is allowed under the Chesapeake Bay Preservation Area Designation and Management Regulations, it still must conform to all applicable requirements of the Regulations and King William County's Bay Act program. The following is a list of the requirements that must be adhered to in order for the project to be consistent with the Act, Regulations and King William County's local Bay Act program. Be aware that King William County amended its Bay Act ordinance and is currently having it re-codified. Therefore, the specific reference numbers from the County ordinance noted below are likely to change following the re-codification.

1. Per Section 9 VAC 10-20-130.1.a of the Regulations and Division 20, Section 20-11(A)1) of King William County's Bay Act ordinance – a water quality impact assessment must be developed and submitted for the King William Reservoir. The water quality impact assessment must provide information on the impacts of the reservoir on water quality and lands in the Resource Protection Area as well as determine specific measures for mitigation of those impacts.

2. Per Section 9 VAC 10-20-105 of the Regulations and Division 20, Section 20-6 of King William County's Bay Act ordinance – the site-specific boundaries of the Resource Protection Area must be delineated onsite, including all water bodies with perennial flow. This is to be accomplished *prior* to approval of any plan of development, site plan, water quality impact assessment, etc.

3. Per Section 9 VAC 10-20-130.1.b of the Regulations and Subdivisions a.-c. of Division 20, Section 20-11(A)(2) of King William County's Bay Act ordinance – the following conditions must be met for the development of the reservoir to be permitted in the RPA as a water-dependent facility:

a. It does not conflict with King William County's comprehensive plan;

b. It complies with the performance criteria: minimizing land disturbance and impervious coverage, preserving existing vegetation, adhering to erosion and sediment control and stormwater management requirements, obtaining all other state and federal permits, and it must be approved through King William County's plan of development process, (which includes a site plan, land disturbing permit, erosion and sediment control plan, landscaping plan and stormwater management plan);

c. Any non-water dependent component is located outside of RPAs; and

d. Access to the water dependent facility will be provided with the minimum disturbance necessary. Where practicable, a single point of access will be provided.

At this point, it is not possible to determine if the King William Reservoir complies with all of the Bay Act requirements, given that it is in the permitting phase of the project and that actual site plans, water quality impact assessments and other plans and local permits have not yet been developed or submitted. King William County has ultimate approval authority over the reservoir, but the Chesapeake Bay Local Assistance Board is charged with ensuring that the County enforces and implements its local Bay Act program consistent with the Act and Regulations (see Section 10.1-2103.10 of the Act). Therefore, as the reservoir moves through the various review phases, the staff of DCR-DCBLA as staff to the Local Assistance Board, **will continue to monitor the project for compliance with the Act**, the Regulations, and King William County's local Bay Act requirements.

**6. Public Comments on Coastal Natural Resource Areas, Wetlands, Aquatic Spawning, Nursery Feeding Grounds, and Significant Wildlife Habitat Areas Advisory Policies**

*Issue 1.* The proposed project would include an intake pipe withdrawing as much as a third of the river's flow from the most productive shad spawning area in the entire Chesapeake region. There is a fishing moratorium on shad, the population of which is already severely depleted. The alteration of the flow would alter the salinity of the river; shad are very sensitive to changes in salinity. A change in the river's salinity will disrupt adult spawning behavior, change adult migratory patterns, and damage the marsh plain where young shad feed and seek shelter from predators.

*Comments on this issue from:* Mr. Carl Custalow, Chief, Mattaponi Tribe (Transcript, pages 5-7).

*Questions:* Please advise whether your agency has made, or will make, any recommendations or determinations regarding the management of Mattaponi River shad habitat. If recommendations have been or will be made, to whom were they, or will they be, addressed? Does this issue affect your evaluation of the proposed project?

**Department of Conservation and Recreation Response**

DCR's responded to these issues as follows:

Shad habitat management is not under the purview of DCR.

DCR states that some issues raised by the public are relevant to the occurrences of the federally listed sensitive joint vetch *(Aeschynomene virginica)* within the Garnetts Creek Conservation Site (Biodiversity Rank B3, indicating high significance), which is in the vicinity of and downstream of the proposed intake structure. The potential for erosion or accretion of Mattaponi marshes, and the potential for alteration of the salinity of the river as a result of the proposed intake structure may jeopardize the continued presence of this federally protected plant if significant changes occur in either of these features. For this reason, DCR restates the importance of a long-term monitoring program for sensitive joint-vetch in the Mattaponi tidal marshes. DCR would like to review such a program to ensure its effectiveness.

The pipeline route from the reservoir crosses the Cousiac Marsh Conservation Site, (Biodiversity Rank B3, indicating high significance) at the Pamunkey Creek Crossing south of the King William and New Kent County line. This area supports two significant communities, a tidal freshwater marsh and tidal hardwood swamp. (More information on these communities is available at http://www.dcr.virginia.gov/ncintro.htm)

In its December 10, 2004, comments, DCR stated that the agency had recently received shapefiles from the Newport News Waterworks and wished to review the project using the Virginia Conservation Lands Needs Assessment (VCLNA). The VCLNA is a GIS-based analysis for identifying and prioritizing conservation lands in Virginia. A major component of the VCLNA is the Natural Landscape Assessment (NLA), which is an analysis that addresses the critical issue of habitat fragmentation by identifying remaining patches of unfragmented natural land (cores) in Virginia's Coastal Resources Management areas and prioritizing them according to their ecological significance, especially with regard to their value for protecting forest interior and wetland habitats and the wildlife and plant species associated with these habitats. The NLA is a broad-scale tool that provides a Coastal Zone- wide context for evaluating the significance of potential loss of specific habitats. (See http://www.dcr.virginia.gov/dnh/vclna.htm for more information about VCLNA and NLA)

Among the many features identified by the NLA are cores, wetland core clusters, habitat corridors, and nodes. Cores are large, unbroken blocks of forest and/or or wetland that are becoming less common in the coastal zone due largely to sprawl and other development. These identified cores are important because they provide habitat for a wide range of species but most importantly for interior species that are intolerant to human disturbances associated with development. Cores also are important for maintaining water quality by buffering and protecting aquifers and surface waters. Cores, especially the highest priority cores, can be identified as significant wildlife habitat areas.

Wetland core clusters are large groupings of estuarine or marine wetland cores that are connected by water and function as units. There are seven wetland core clusters identified in the Coastal Zone; all seven are considered highly important to the natural landscape of coastal Virginia, and can also be identified as significant wildlife habitat areas.

Habitat corridors can serve to maintain connectivity between high priority NLA cores (C1, outstanding significance, and C2, very high significance). These corridors follow existing natural landscape features but are likely to need additional habitat restoration to function effectively as habitat corridors.

Nodes along habitat corridors represent important stepping stones for wildlife movement between significant cores. Habitat corridors are designed with a 300-meter width, the minimum needed to ensure continuous interior habitat, but they are widened into nodes when they intersect existing natural habitat in lower-ranked cores, interior forests, and wetlands.

Comparing the footprint of the proposed King William Reservoir project with the NLA, a variety of overlaps with Natural Landscape Assessment features have been identified (see accompanying map):

- The King William Reservoir pool will flood much of a relatively unfragmented natural area identified as a core area of high significance (ranked C3) by the VCLNA NLA.
- The core that would be flooded by the King William Reservoir pool also serves as a corridor node, an important component of the connectivity among three neighboring higher ranked cores (C2, very high significance).
- The water intake in the Mattaponi River is contained within the Mattaponi Wetland Core Cluster.
- A portion of the path of the Mattaponi Pipeline is contained within a C2 (very high significance) corridor.
- The Pamunkey River Crossing portion of the pipeline from the reservoir toward Newport News crosses the Pamunkey Wetland Core Cluster.
- The path of the Pamunkey River to Outfall section of the pipeline crosses another C3 (high significance) core that serves as a node on a habitat corridor connecting two C2 (very high significance) cores. This section of pipeline also crosses a C5 (general significance) core
- At the Outfall at Diascund Creek Reservoir, the pipeline terminates at Beaverdam Creek within a C4 (moderate significance) core.

Analysis using the VCLNA makes it clear that the King William Reservoir project is likely to have a substantial impact on the fragmentation of significant wildlife habitats in the region. In particular, the reservoir will be a significant fragmentation feature for most interior wildlife species. If the reservoir is constructed, we highly recommend that the protected buffer around the reservoir be maintained in a natural state and be extended to include the entire identified C3 core. This would serve as partial compensation for the habitat that will be flooded and will help to maintain high water quality in the reservoir.

DCR believes that the VCLNA Natural Landscape Assessment will be useful in assessing the relative merits of wetland mitigation sites. While DCR has not yet had the opportunity to review the proposed wetland mitigation plan, DCR notes that the extensive wetland loss that will result from creation of the King William Reservoir will require offset by a very large effective wetlands mitigation program. DCR understands that the wetland mitigation plan has been posted to the U. S. Army Corps of Engineers website and is open for public comment until 1 February 2005. Any comments DCR submits on the mitigation plan will be forwarded to DEQ.

**7. Public Comments on Underwater Historic Sites Advisory Policy**

*Issue 1.* According to GULC-IPR, the applicant asserts, in its April 16, 1999 submission of a federal consistency certification and also its September 15, 2004 submission of a consistency certification update, that with regard to underwater historic sites, the "archaeological studies conducted for the project have not identified any locations sensitive for underwater archaeological sites." This conflicts with the Norfolk District's Final Recommended Record of Decision which stated that the project would cause flooding or excavation of 115 sites, 79 of which were recommended by DHR for further study. In addition, the applicant has ignored the results of an on-going evaluation of the impact of its choice of wetland mitigation sites on the Mattaponi Tribe's historic properties.

*Comments on this issue from:* Georgetown University Law Center, Institute for Public Representation (October 27 letter, pages 5-6).

*Question:* Please comment briefly on the results of archaeological studies and indicate whether potential impacts on archaeological resources have been fully considered.

*Issue 2.* Contrary to the assertion by the applicant, the section 106 process will not adequately mitigate for the flooding of one of the richest areas in the Commonwealth for woodland Indian artifacts. Moreover, as the Final Recommended Record of Decision indicated, the applicant's proposed wetland mitigation plan would harm King William County's historic Indian sites.

*Comments on this issue from:* Georgetown University Law Center, Institute for Public Representation (October 27 letter, pages 5-6).

*Question:* Please indicate whether the section 106 process can effectively mitigate flooding or other harm to historic Indian sites and woodland Indian artifacts in the event the proposed project is built and the proposed wetland mitigation plan is carried out. To what extent would historic resources be irretrievably lost in this event?

**Department of Historic Resources Response**

No additional response was submitted.